APPENDIX A

Adopt on a permanent basis Supreme Court Rule 12(1), which was amended on a temporary basis by supreme court order dated June 10, 2003, and which states as follows:

(1) Supreme Court Records Subject to Public Inspection.

(a) General Rule. In all cases in which relief is sought in the supreme court, all pleadings, docketed entries, and filings related thereto (hereinafter referred to as "case records") shall be available for public inspection unless otherwise ordered by the court in accordance with this rule.

(b) Exceptions. The following categories of case records are not available for public inspection.

(1) records of juvenile cases, including cases of delinquency, abuse or neglect, children in need of services, termination of parental rights, and adoption, which by statute are confidential;

(2) records of guardianship cases filed under RSA chapter 463, but only to the extent that such records relate to the personal history or circumstances of the minor and the minor's family, *see* RSA 463:9;

(3) records of guardianship cases filed under RSA chapter 464-A, but only to the extent that such records directly relate to alleged specific functional limitations of the proposed ward, *see* RSA 464-A:8;

(4) applications for a grand jury and grand jury records, which by statute and common law are confidential;

(5) records of other cases that are confidential by statute, administrative or court rule, or court order.

(c) Burden of Proof. The burden of proving that a case record or a portion of a case record should be confidential rests with the party or person seeking confidentiality.

(d) Notwithstanding anything in this rule to the contrary, the supreme court may make public any order or opinion of the supreme court dismissing, declining, summarily disposing of, or deciding any case. Information which would compromise the court's determination of confidentiality, *e.g.*, the name of a juvenile, shall be omitted or replaced by a descriptive term.

APPENDIX B

Amend Supreme Court Rule 13 on a temporary basis by deleting said rule and replacing it with the following:

RULE 13. THE RECORD

(1) The papers and exhibits filed and considered in the proceedings in the lower court or administrative agency from which the questions of law have been transferred, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the lower court or administrative agency shall be the record in all cases entered in the supreme court.

(2) The moving party shall be responsible for ensuring that all or such portions of the record relevant and necessary for the court to decide the questions of law presented by the case are in fact provided to the supreme court. The supreme court may dismiss the case for failure to comply with this requirement.

(3) The supreme court will not ordinarily review any part of the record that has not been provided to it in an appendix by a party or transmitted to it by the lower court or administrative agency. *See* Rules 13(2), 17(1). Unless a party believes that providing a copy in an appendix of a paper or exhibit filed below would be impracticable or inadequate for appellate review, a party seeking to provide a paper or exhibit to the supreme court shall file a copy of the paper or exhibit in an appendix to the party's brief, which shall be filed on or before the date established for filing the party's brief.

(4) If a party believes that providing a copy in an appendix of any papers or exhibits filed below would be impracticable or inadequate for appellate review, the party shall file a motion with the supreme court on or before the date established for filing the party's brief, requesting that the supreme court order the lower court or administrative agency to transmit the papers or exhibits in question to the supreme court. The motion shall designate the papers and exhibits in question, and shall show cause why providing a copy in an appendix would be insufficient or inadequate for appellate review.

(5) Neither the original nor a reproduction of the record nor any part of the record shall be transmitted to the supreme court by the lower court or administrative agency from which the questions of law have been transferred, unless a supreme court order, rule, or form expressly requires such a transmittal.

(6) In lieu of the record as defined in section (1) of this rule, the parties may prepare and sign an original and 12 copies of a statement of the case showing how the questions of law transferred arose and were decided, and setting forth only so many of the agreed facts as are essential to a decision of the questions presented.

(7) If more than one transfer of questions of law in a case is made to the supreme court, each moving party shall comply with the provisions of rule 14(1) and of this rule and a single record shall be transmitted.

Transition Period

The amendments to Supreme Court Rules 3, 5, 6, 7, 10, 13, 15, 16, 17, 18, 21, and 25 that take effect on January 1, 2004, shall apply to any case first docketed in the supreme court on or after January 1, 2004; that is, any case with a docket number of "2004-XXXX." Any case docketed in the supreme court prior to January 1, 2004, *e.g.*, cases with docket numbers such as "2003-XXXX" or "2002-XXXX," shall not be governed by the aforesaid amendments.

APPENDIX C

Amend Supreme Court Rule 15(8) by deleting said paragraph and replacing it with the following:

> (8) The court may order the State or the appealing party in every case in which the State is not a party to file with the clerk of the supreme court a copy of the transcript immediately after oral argument or immediately after the case is submitted for decision on the briefs and without oral argument.

APPENDIX D

Amend Supreme Court Rule 16(7) by reducing the time for filing reply briefs to 20 days, so that said section (7) as amended shall state as follows:

> (7) Unless specially ordered otherwise, the original and 12 copies of the opening brief shall be filed with the clerk of the supreme court, in addition, 2 copies with counsel for each party separately represented, and like distribution shall be made of the opposing brief, opposing memorandum of law, or any other brief, all within the times specified in the applicable scheduling order.
>
> The party filing the opening brief may similarly file, and make like distribution of, a reply brief, which shall be filed by the earlier of 20 days following the submission of the opposing brief or opposing memorandum of law, or 10 days before the date of oral argument. A reply brief may be filed after the expiration of the applicable time period only by leave of court. Responses to a reply brief shall not ordinarily be allowed. No response to a reply brief may be filed except by permission of the court received in advance.
>
> Whenever a party desires to present late authorities, newly enacted legislation, or other intervening matters that were not available in time to have been included in his brief, he may similarly file, and make like distribution of, such new matters up to and including the day of oral argument, or by leave of the supreme court thereafter.
>
> The clerk of the supreme court shall not accept any brief or memorandum of law after a case has been argued or submitted, unless the supreme court has granted to the party offering to file the brief or memorandum of law special leave to do so in advance.

APPENDIX E

Adopt new Supreme Court Rule 16-A as follows:

RULE 16-A. PLAIN ERROR

A plain error that affects substantial rights may be considered even though it was not brought to the attention of the trial court or the supreme court.

APPENDIX F

Amend Supreme Court Rule 19 by deleting said rule and replacing it with the following.

RULE 19. MEDIA ACCESS TO COURT PROCEEDINGS

With prior notice to the clerk, and the consent of the court, any person may record and photograph, or broadcast by radio or television, the oral proceedings of the supreme court, provided that the orderly procedures of the court are not impaired or interrupted.

(1) *Prior Notice*. Members of the broadcast media who wish to cover a proceeding are required to give reasonable notice to the court information officer in advance of the court session. The court information officer will notify the court clerk and court security of media coverage.

(a) No more than one still photographer and one videographer may be in the courtroom at one time. Video equipment must remain stationary during the entire court session. Rotation of still photographers will be under the direction of the court information officer who will minimize movement while court is in session.

(b) No person or organization will have exclusive access to a proceeding in the courtroom. The court information officer will advise media outlets if pool coverage is necessary.

(2) *Equipment*. Broadcast media should arrive at least thirty (30) minutes prior to oral argument to begin setting up equipment. All equipment must be in place and tested fifteen (15) minutes in advance of the time scheduled for the court session. Equipment may not be adjusted or dismantled during the proceedings.

(a) Exact locations for all video and still cameras, and audio equipment within the courtroom will be determined by the court information officer. Movement in the courtroom is prohibited, unless specifically approved by the court information officer.

(b) Video and photographic equipment must be of professional quality with minimal noise so as not to disrupt the proceedings; flash equipment and other supplemental lighting or sound equipment is prohibited unless specifically approved by the court.

(c) Handheld tape recording devices may be used but shall not be placed on the bar to the well of the courtroom.

(d) Cellular telephones should be turned off or muted at all times.

(3) *Courtroom Conduct*. Broadcast or print interviews will not be permitted inside the courtroom or anywhere in the supreme court building either before or after oral argument unless

specifically approved by the court information officer. Exceptions may be made in case of inclement weather.

(a) Distribution of printed material, including pamphlets and flyers of any kind, is prohibited both in the courtroom and in the supreme court building.

(b) Photographers, videographers and technical support staff covering a proceeding shall avoid activity that might distract participants or impair the dignity of the proceedings.

(c) All media personnel shall observe the customs of the court.

(d) Appropriate dress is required.

Comment

Supreme Court Rule 19 provides generally that, with prior notice to the clerk, oral proceedings before the court may be broadcast, recorded and photographed by members of the media; but the rule requires that such activities not impair or interrupt the orderly procedures of the court. The purpose of the amended rule is to define that conduct which the court considers appropriate to avoid disruption of proceedings. The rule is subject to orders of the court in particular cases.

APPENDIX G

Amend Supreme Court Rule 32-A by deleting said rule and replacing it with the following:

RULE 32-A. COUNSEL IN GUARDIANSHIP, INVOLUNTARY ADMISSION, AND TERMINATION OF PARENTAL RIGHTS CASES

(1) Whether retained by the defendant or appointed by a lower court, trial counsel in a guardianship case commenced by the filing of a petition pursuant to RSA 464-A:4 or RSA 464-A:12, an involuntary admission case commenced by the filing of a petition pursuant to RSA 135-C:36, or a termination of parental rights case commenced by the filing of a petition pursuant to RSA 170-C:4, shall be responsible for representing the defendant in the supreme court unless the supreme court relieves counsel from this responsibility for good cause shown. When the defendant clearly indicates to counsel a desire to appeal, counsel shall be responsible for the filing of a notice of appeal. Provided, however, that if counsel concludes that the appeal is frivolous, counsel must first attempt to persuade the defendant not to appeal. If, however, the defendant insists on appealing, counsel shall file the notice of appeal, setting forth therein all arguable issues. If counsel is thereafter ordered to file a brief, counsel shall examine the record and again determine whether any nonfrivolous arguments exist. If counsel concludes that the appeal is frivolous, counsel shall again advise the defendant to withdraw the appeal. If the defendant decides not to withdraw the appeal, counsel shall file a brief that argues the defendant's case as well as possible. In such a case, the assertion of a frivolous issue before the court shall not constitute a violation of New Hampshire Rule of Professional Conduct 3.1. However, in no case shall counsel deceive or mislead the court, or deliberately omit facts or authority that directly contradict counsel's arguments. Cf. State v. Cigic, 138 N.H. 313, 318 (1994) (explaining scope of exception to Professional Conduct Rule 3.1 for asserting frivolous issues in criminal appeals).

(2) A motion to withdraw as counsel on appeal in a guardianship case commenced by the filing of a petition pursuant to RSA 464-A:4 or RSA 464-A:12, an involuntary admission case commenced by the filing of a petition pursuant to RSA 135-C:36, or a termination of parental rights case commenced by the filing of a petition pursuant to RSA 170-C:4, must state reasons that would warrant the grant of leave to withdraw.

Absent a showing of exceptional circumstances, the motion must be accompanied by a showing that new counsel has been appointed by the trial court or retained to represent the defendant on appeal.

(3) Trial counsel shall continue to participate until and unless the motion to withdraw is approved by the supreme court.

(4) Indigent cases appealed to the supreme court must be accompanied by petitions for either initial assignment or continued assignment of counsel together with a current financial affidavit or a photocopy of same.

APPENDIX H

Amend Supreme Court Rule 33(1) by deleting said paragraph and replacing it with the following:

(1) (a) An attorney, who is not a member of the Bar of this State, shall not be allowed to enter an appearance in any case, except on application to appear pro hac vice, which may be granted if a member of the Bar of this State is associated with him or her and present at oral argument.

(b) An attorney who is not a member of the Bar of this State seeking to appear pro hac vice shall file a verified application with the court, which shall contain the following information:

(1) the applicant's residence and business address;

(2) the name, address and phone number of each client sought to be represented;

(3) the courts before which the applicant has been admitted to practice and the respective period(s) of admission;

(4) whether the applicant: (i) has been denied admission pro hac vice in this State; (ii) had admission pro hac vice revoked in this State; or (iii) has otherwise formally been disciplined or sanctioned by any court in this State. If so, the applicant shall specify the nature of the allegations; the name of the authority bringing such proceedings; the caption of the proceedings, the date filed, and what findings were made and what action was taken in connection with those proceedings;

(5) whether any formal, written disciplinary proceeding has ever been brought against the applicant by any disciplinary authority in any other jurisdiction within the last five years and, as to each such proceeding: the nature of the allegations; the name of the person or authority bringing such proceedings; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings;

(6) whether the applicant has been formally held in contempt or otherwise sanctioned by any court in a written order in the last five years for disobedience to its rules or orders, and, if so: the nature of the allegations; the name of the court before which such proceedings were conducted; the date of the contempt order or sanction, the caption of the proceedings, and the substance of the court's rulings (a copy of the written order or transcript of the oral rulings shall be attached to the application);

(7) the name and address of each court or agency and a full identification of each proceeding in which the applicant has filed an application to appear pro hac vice in this State within the preceding two years; the date of each application; and the outcome of the application; and

(8) the verified application shall contain the name, address, telephone number and bar number of an active member in good standing of the Bar of this State who will be associated with the applicant and present at oral argument.

(c) The court has discretion as to whether to grant applications for admission pro hac vice. An application ordinarily should be granted unless the court finds reason to believe that such admission:

(1) may be detrimental to the prompt, fair and efficient administration of justice;

(2) may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent;

(3) one or more of the clients the applicant proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk; or

(4) the applicant has engaged in such frequent appearances as to constitute common practice in this State.

APPENDIX I

Amend Supreme Court Rule 37(1)(b) by deleting said subsection and replacing it with the following:

(b) *Jurisdiction*: Any attorney admitted to practice law in this State, and any attorney specially admitted by a court of this State for a particular proceeding, and any attorney not admitted in this State who practices law or renders or offers to render any legal services in this State, and any non-lawyer representative permitted to represent other persons before the courts of this State pursuant to RSA 311:1, is subject to the disciplinary jurisdiction of this court and the attorney discipline system.

Nothing herein contained shall be construed to deny to any other court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt. Suspension or disbarment of an individual subject to the attorney discipline system shall not terminate jurisdiction of this court.

APPENDIX J

Adopt on a permanent basis Supreme Court Rule 37(3)(a), which was amended on a temporary basis by supreme court order dated October 22, 2003, and which provides as follows:

(3) ***Professional Conduct Committee:***

(a) The court shall appoint a committee to be known as the professional conduct committee which shall consist of twelve members, one of whom shall be designated by the court as the chair. Two members of the professional conduct committee shall be designated by the court as vice chairs, to act in the absence or disability of the chair. One of the vice chairs must be an attorney, and the other must be a non-attorney. At least four of the members of the professional conduct committee shall be non-attorneys. The court shall attempt to appoint members of the professional conduct committee from as many counties in the State as is practicable; and one of the members shall be designated pursuant to section (3)(d), and shall have both the special term of office and the additional special responsibilities set forth therein.

In the event that any member of the professional conduct committee has a conflict of interest or is otherwise disqualified from acting with respect to any proceeding before the professional conduct committee, the court may, upon request or upon its own motion, appoint another person to sit on such proceeding and such temporary replacement, rather than the disqualified member, shall be considered a professional conduct committee member for quorum and voting purposes in connection with such investigation or proceeding.

APPENDIX K

Amend Supreme Court Rule 37(3)(c) by adding a new subsection (14), so that Rule 37(3)(c) as amended shall state as follows:

(c) The professional conduct committee shall have the power and duty:

(1) To appoint a disciplinary counsel and a general counsel and such deputy and assistant disciplinary counsel and general counsel as may from time to time be required to properly perform the functions hereinafter prescribed. To appoint other professional staff, including auditors, and clerical staff whether full-time or part-time. To appoint independent bar counsel if needed.

(2) To consider hearing panel reports and written memoranda of disciplinary counsel and respondents. To conduct oral arguments in which disciplinary counsel and each respondent are given ten (10) minutes to address the findings and rulings contained in the hearing panel reports. After consideration of oral arguments, hearing panel reports, transcripts of hearings before hearing panels and memoranda, to determine whether there is clear and convincing evidence of violations of the rules of professional conduct. To remand complaints to hearing panels for further evidentiary proceedings. To dismiss grievances or complaints, with or without a warning, administer a reprimand, public censure or a suspension not to exceed six (6) months.

(3) To attach such conditions as may be appropriate to any discipline it imposes.

(4) To divert attorneys out of the attorney discipline system as appropriate and on such terms and conditions as is warranted.

(5) To institute proceedings in this court in all matters which the professional conduct committee has

determined warrant the imposition of disbarment or of suspension for a period in excess of six (6) months.

(6) To consider and act upon requests by disciplinary counsel or respondents to review a decision by the complaint screening committee to refer a complaint to disciplinary counsel for the scheduling of a hearing.

(7) To consider and act upon requests from disciplinary counsel to dismiss a matter prior to a hearing if disciplinary counsel concludes that the development of evidence establishes that there is no valid basis for proceeding to a hearing.

(8) To consider and act upon requests for reconsideration of its own decisions.

(9) To consider and act upon requests for protective orders.

(10) To propose rules of procedure not inconsistent with the rules promulgated by this court.

(11) To be responsible for overseeing all administrative matters of the attorney discipline system.

(12) To require a person who has been subject to discipline imposed by the professional conduct committee to produce evidence of satisfactory completion of the multistate professional responsibility examination, in appropriate cases.

(13) To educate the public on the general functions and procedures of the attorney discipline system.

(14) Upon its approval of the annual report prepared by the attorney discipline office, to file a copy of the report with the chief justice of the supreme court and to make copies of the report available to the public.

Any attorney aggrieved by a finding of professional misconduct or by a sanction imposed by the professional conduct committee shall have the right to appeal such finding and sanction to this court. Disciplinary counsel shall have the right to appeal a sanction. Such rights must be exercised within thirty (30) days from the date on the notice of the

finding and sanction. In the event that an attorney aggrieved by a finding of professional misconduct and sanction imposed by the professional conduct committee has filed a timely request for reconsideration pursuant to Supreme Court Rule 37A(VI), the right to appeal the finding of professional misconduct and the sanction shall be exercised within thirty (30) days from the date of the letter notifying the attorney of the professional conduct committee's decision on the request for reconsideration. Successive requests for reconsideration shall not stay the running of the appeal period. The manner of the appeal shall be based on the record before the professional conduct committee and shall include the right to submit briefs and present oral argument. The findings of the professional conduct committee may be affirmed, modified or reversed.

APPENDIX L

Amend Supreme Court Rule 37(6)(c)(5) by deleting said subsection and replacing it with the following:

> (5) To oversee and/or perform administrative functions for the attorney discipline system including but not limited to maintaining permanent records of the operation of the system, preparation of the annual budget, and preparation of an annual report summarizing the activities of the attorney discipline system during the preceding year.

APPENDIX M

Amend Supreme Court Rule 37(14) by adding a new subsection (f), so that said section (14) as amended shall state as follows:

(14) ***Reinstatement and Readmission:***

(a) An attorney who has been suspended for a specific period may not move for reinstatement until the expiration of the period of suspension, and upon the completion of all terms and conditions set forth in the order of suspension.

(b) *General Rule*: A motion for reinstatement by an attorney suspended for misconduct by the court, rather than for disability, or an application for readmission by a New Hampshire licensed attorney who has been disbarred by the court or has resigned while under disciplinary investigation shall be referred to the professional conduct committee by the supreme court. An application for readmission shall also be referred to the character and fitness committee pursuant to Supreme Court Rule 42. A motion for reinstatement by an attorney suspended by the professional conduct committee shall be filed directly with that committee. Upon receipt of a motion for reinstatement or an application for readmission, the professional conduct committee shall refer the motion or application to a panel of the hearings committee. The attorney discipline office shall then cause a notice to be published in a newspaper with statewide circulation, and one with circulation in the area of the respondent's former primary office, as well as the *New Hampshire Bar News* that the respondent attorney has moved for reinstatement or applied for readmission. The notice shall invite anyone to comment on the motion or application by submitting said comments in writing to the attorney discipline office within twenty (20) days. All comments shall be made available to the respondent attorney. Where feasible, the attorney discipline office shall give notice to the original complainant. The hearing panel shall promptly schedule a hearing at which the respondent shall have the burden of demonstrating by clear and convincing evidence that he or she has the moral qualifications, competency and learning in law required for admission to practice law in this State and that the resumption of the practice of law will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive to the public interest. At the conclusion of the hearing, the hearing panel shall promptly file a report containing its findings and recommendations and transmit same, together with the record, to the professional conduct committee. The professional conduct committee shall review the report of the hearing panel and the record, allow the filing of written memoranda by disciplinary counsel and the respondent, review the hearing transcript and hold oral argument. Thereafter, the professional conduct committee shall file its own recommendations and findings with the court, together

with the record. Following the submission of briefs and oral argument to the court, if any, the court shall enter a final order.

(c) In all proceedings upon a motion for reinstatement or application for readmission, cross-examination of the respondent attorney's witnesses and the submission of evidence, if any, in opposition to the motion for reinstatement or application for readmission shall be conducted by disciplinary counsel.

(d) The court in its discretion may direct that expenses incurred by the attorney discipline system in the investigation and processing of a motion for reinstatement or application for readmission be paid by the respondent attorney.

(e) Motions for reinstatement by New Hampshire licensed attorneys suspended for misconduct shall be accompanied by evidence of the movant's satisfactory completion of the multistate professional responsibility examination. Applicants for readmission shall produce evidence of satisfactory completion of the multistate professional responsibility examination pursuant to the provisions of Supreme Court Rule 42.

(f) *Special Rule for Suspensions of Six Months or Less*: Notwithstanding the provisions of Rule 37(14)(b), a lawyer who has been suspended for six months or less pursuant to disciplinary proceedings shall be reinstated by the court following the end of the period of suspension by filing with the court and serving upon disciplinary counsel a motion for reinstatement accompanied by: (1) an affidavit stating that he or she has fully complied with the requirements of the suspension order and has paid any required fees and costs; and (2) evidence that he or she has satisfactorily completed the Multistate Professional Responsibility Examination since his or her suspension.

APPENDIX N

Adopt on a permanent basis Supreme Court Rule 37(16)(g), which was amended on a temporary basis by supreme court order dated October 22, 2003, and which states as follows:

> (g) Either a respondent attorney or disciplinary counsel may appeal findings of the professional conduct committee and the imposition of a reprimand, public censure or a suspension of six (6) months or less by filing a notice of appeal with the supreme court. The court shall, after the filing of briefs and oral argument, affirm, reverse or modify the findings of the professional conduct committee.
>
> The filing of an appeal by the respondent shall stay the disciplinary order being appealed unless the professional conduct committee orders otherwise. If the professional conduct committee orders otherwise, it shall set forth in its order its reasons for doing so. In all cases, however, the supreme court may on motion for good cause shown stay the disciplinary order.

APPENDIX O

Amend Supreme Court Rule 37(23), which was adopted on a temporary basis by supreme court order dated October 22, 2003, and adopt said section as amended on a permanent basis as follows:

(23) ***Applicability to Pending Disciplinary Matters:***

The provisions of this rule, as amended effective January 1, 2004, shall not apply to any disciplinary matter pending before the supreme court on January 1, 2004. The provisions of this rule, as amended effective January 1, 2004, shall not apply to any disciplinary matter pending before the committee on January 1, 2004, in which prior to that date the committee has determined that formal proceedings shall be held and the hearing panel has concluded its evidentiary hearing. All such proceedings shall be governed by the provisions of Supreme Court Rule 37 that were in effect prior to January 1, 2004.

APPENDIX P

Adopt on a permanent basis Supreme Court Rule 37A(III)(d)(4), which was amended on a temporary basis by supreme court order dated October 22, 2003, and which states as follows:

(4) *Appeal of Sanction.*

(A) A respondent shall be entitled to appeal a finding of professional misconduct or a sanction, and disciplinary counsel shall be entitled to appeal a sanction, issued by the professional conduct committee by filing a written notice of appeal in accordance with the rules of the supreme court. The appeal shall be public.

(B) The filing of an appeal by the respondent shall stay the disciplinary order being appealed unless the professional conduct committee orders otherwise. If the professional conduct committee orders otherwise, it shall set forth in its order its reasons for doing so. In all cases, however, the supreme court may on motion for good cause shown stay the disciplinary order.

APPENDIX Q

Adopt on a permanent basis Supreme Court Rule 37A(VIII), which was adopted on a temporary basis by supreme court order dated October 22, 2003, and which states as follows:

(VIII) ***Applicability to Pending Disciplinary Matters***

The provisions of this rule, as amended effective January 1, 2004, shall not apply to any disciplinary matter pending before the supreme court on January 1, 2004. The provisions of this rule, as amended effective January 1, 2004, shall not apply to any disciplinary matter pending before the committee on January 1, 2004, in which prior to that date the committee has determined that formal proceedings shall be held and the hearing panel has concluded its evidentiary hearing. All such proceedings shall be governed by the provisions of Supreme Court Rule 37A that were in effect prior to January 1, 2004.

APPENDIX R

Amend Supreme Court Rule 38 TERMINOLOGY by inserting the following two new definitions into the list of definitions alphabetically:

> "Candidate." A candidate is a person seeking selection for judicial office by appointment, or a person who knows he or she is being considered for appointment to judicial office by an appointing authority.
>
> . . . .
>
> "Impartiality" or "impartial" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

APPENDIX S

Amend Supreme Court Rule 38 Canon 1 by deleting the commentary that follows Canon 1 and by replacing it with the following:

Commentary:

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. A judiciary of integrity is one in which judges are known for their probity, fairness, honesty, uprightness, and soundness of character. An independent judiciary is one free of inappropriate outside influence. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

APPENDIX T

Amend Supreme Court Rule 38 Canon 2A by deleting the commentary that follows Canon 2A and by replacing it with the following:

Commentary:

Public confidence in the judiciary is promoted by responsible and proper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. Examples are the restrictions on judicial speech imposed by Sections 3(B)(9) and (10) that are indispensable to the maintenance of the integrity, impartiality, and independence of the judiciary.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include intentional violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in the mind of a reasonable, disinterested person fully informed of the facts a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

APPENDIX U

Amend Supreme Court Rule 38 Canon 3B by deleting paragraphs (9) through (11) and accompanying commentary, and by replacing them with the following paragraphs (9) through (12) and accompanying commentary:

(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

(10) A judge shall not, with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

Commentary:

Sections 3B(9) and (10) restrictions on judicial speech are essential to the maintenance of the integrity, impartiality, and independence of the judiciary. A pending proceeding is one that has begun but not yet reached final disposition. An impending proceeding is one that is anticipated but not yet begun. The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section recognizes the appropriateness of public comment by judges of an informational and educational nature concerning the administration of justice, and to dispel public misconceptions and misinformation about the operation of the court system. Sections 3B(9) and (10) do not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by Rule 3.6 of the N.H. Rules of Professional Conduct.

(11) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

Commentary:

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

(12) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

APPENDIX V

Amend Supreme Court Rule 38 Canon 3E(1) by deleting said section and replacing it with the following:

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

Commentary:

Under this rule, a judge should disqualify himself or herself whenever the judge's impartiality might reasonably be questioned by a disinterested person fully informed of the facts, regardless whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

Commentary:

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b); a judge formerly employed by a government agency, however, should disqualify himself or

herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

Commentary:

The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Section 3E(1), or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Section 3E(1)(d)(iii) may require the judge's disqualification.

(e) the judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to

(i) an issue in the proceeding; or

(ii) the controversy in the proceeding.

APPENDIX W

Amend Supreme Court Rule 38 Canon 5 by deleting said Canon and its accompanying commentary and replacing it with the following:

CANON 5

A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity

A. Political Conduct in General.

(1) A judge shall not:

(a) act as a leader or hold any office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions.

(2) A judge shall resign from judicial office upon becoming a candidate either in a party primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention or a moderator of any governmental unit, if the judge is otherwise permitted by law to do so.

(3) A judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

B. Judicial Candidates.

(1) A candidate for a judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to candidate; and

(b) shall not:

(i) with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office; or

(ii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or any other candidate or potential candidate.

Commentary:

Section 5B(1)(b) prohibits a candidate for judicial office from making statements that commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Sections 3B(9)and (10), the general rules on public comment by judges. Section 5B(1)(b) does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Nor does this Section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office, such as statements to commissions charged with recommending judicial selection and executive officials and bodies charged with nominating or confirming appointment. See also Rule 8.2 of the N.H. Rules of Professional Conduct.

APPENDIX X

Amend Supreme Court Rule 42(3)(b) by adding a sentence to the end of said subsection, so that said subsection, as amended, shall state as follows:

(b) An applicant whose disability requires testing accommodations shall submit a written request to the clerk of the supreme court at the time that the applicant files the petition and questionnaire as provided in Rule 42(5)(e). A copy of the request shall be submitted at the same time to the chair of the board of bar examiners. The written request shall be submitted pursuant to the testing accommodations policy approved by the supreme court and shall describe:

(i) The type of accommodation requested; and

(ii) The reasons for the requested accommodation, including medical documentation in a format set forth in the policy referenced above.

No request for testing accommodations shall be accepted that is received after 4:30 p.m. on May 1 for the July examination, or after 4:30 p.m. on December 1 for the February examination.

APPENDIX Y

Amend Supreme Court Rule 42(7) by deleting said section and replacing it with the following:

(7)(a) Each person seeking to practice law in New Hampshire is required to attend a practical skills course to be presented annually by the New Hampshire Bar Association. The course will assist new admittees in developing basic lawyering skills and in gaining practical knowledge of New Hampshire practice and procedures. Attendance is required and each new admittee will be required to execute an affidavit stating that he or she has attended each session of the course unless otherwise excused by the supreme court. A special committee of the New Hampshire Bar Association Continuing Legal Education Committee will administer the practical skills course but no test will be required. Each new admittee will be licensed to practice law subject to the condition that he or she complete the practical skills course within two years of the date of admission to the bar (unless the admittee satisfies the requirements of paragraph (b) or, in exceptional instances, a longer period is approved in writing by the court) or his or her license to practice shall be suspended.

(b) A new admittee's license to practice shall not be so suspended if, within two years after being admitted to the bar and before completing the practical skills course, he or she leaves New Hampshire on a military or other government service assignment for more than a brief period, intending later to satisfy the requirements of the rule, and promptly so notifies the court in writing; provided, however, he or she attends a practical skills course given within three years of the date of departure, and further provided that, if he or she shall have completed the assignment and returned to New Hampshire within the three-year period, the course taken shall be the first available course given after his or her return. The admittee shall notify the court promptly of his or her return within the three-year period. Upon written request in exceptional instances, the court may extend the three-year period following the date of departure within which the admittee must attend a practical skills course.

(c) Attendance at the practical skills course means, for all new admittees, personal attendance at all sessions of the course.

(d) Exemptions from the practical skills course requirements, or any portion thereof, shall be granted only upon written application filed with the court, setting forth the exceptional circumstances believed to justify the requested exemption.

(e) The practical skills course requirement shall apply to all persons admitted to practice after March 5, 1980, and the provisions of paragraphs (b), (c) and (d) hereof are expressly made applicable to all persons subject to such requirement.

(f) In addition to the other requirements of this rule, all persons who desire to be admitted to practice law shall produce evidence of satisfactory completion of the Multistate Professional Responsibility Examination. The Board of Bar Examiners shall determine the minimum score level which will establish satisfactory completion of the Multistate Professional Responsibility Examination, wherever such satisfactory completion may be required by these rules.

(g) Reinstatement of a license suspended under Rule 42(7)(a) shall be only by order, upon petition to this court following completion of the practical skills course, and upon such conditions as the court deems appropriate. If the petition to this court is filed more than one year after the date of the order suspending the person from the practice of law in this State, then the petition shall be accompanied by evidence of continuing competence and learning in the law, and evidence of continuing moral character and fitness. If the evidence of continuing competence and learning in the law, and evidence of continuing moral character and fitness, are satisfactory to the court, the court may order reinstatement upon such conditions as it deems appropriate.

If the evidence of continuing competence and learning in the law is not satisfactory to the court, the court shall refer the motion for reinstatement to the professional conduct committee for referral to a panel of the hearings committee. The hearing panel shall promptly schedule a hearing at which the attorney shall have the burden of demonstrating by a preponderance of the evidence that he or she has the competency and learning in law required for reinstatement. At the conclusion of the hearing, the hearing panel shall promptly file a report containing its findings and recommendations and transmit same, together with the record, to

the professional conduct committee. The professional conduct committee shall review the report of the hearings committee panel, the record and the hearing transcript and shall file its own recommendations and findings, together with the record, with the court. Following the submission of briefs, if necessary, and oral argument, if any, the court shall enter a final order.

If the evidence of continuing moral character and fitness is not satisfactory to the court, the court shall order the applicant to file with the committee on character and fitness and with the clerk of the supreme court the petition and questionnaire referred to in Supreme Court Rule 42(5)(e). Further proceedings shall be governed by Rule 42.

APPENDIX Z

Adopt on a permanent basis Supreme Court Rule 42(10)(a)(iv), which was adopted on a temporary basis by supreme court order dated February 10, 2004, and which states as follows:

(iv) Have either:

(A) taken and passed the bar examination in another state, territory, or the District of Columbia that allows admission without examination of persons admitted to practice law in New Hampshire under circumstances comparable to those set forth in this rule, provided that the applicant is currently a member in good standing of said jurisdiction and authorized to practice law therein; or

(B) been primarily engaged in the active practice of law, for five of the seven years immediately preceding the date upon which the motion is filed, in states, territories, or the District of Columbia that allow admission without examination of persons admitted to practice law in New Hampshire under circumstances comparable to those set forth in this rule, provided that the applicant was a member in good standing of said jurisdictions and authorized to practice law therein throughout the aforesaid five-year period and is currently a member in good standing of said jurisdictions and authorized to practice law therein;